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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LEE G. FRIEDMAN

Appeal 2009-004221
Application 10/740,744
Technology Center 2100

Decided: March 8, 2010

Before JOHN A. JEFFERY, ST. JOHN COURTENAY, III, and
DEBRA K. STEPHENS, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-23. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellant's invention identifies an input device among a number of similar input devices that are connected to a personal computer (PC). Using the input device, the user provides a "signal stimulus" (e.g., an audible input signal such as speaking into a microphone, or a visual input signal such as hand waving in front of a camera), and the system detects the signal generated by the input device. *See generally* Spec. ¶¶ 0009, 0010, and 0027-33.

Claim 1 is reproduced below:

1. A computer system comprising:

a processor coupled with memory and with a plurality of externally-accessible input ports; and

a device discovery system that polls all the plurality of externally-accessible input ports to identify a user-desired input device among a plurality of substantially similar input devices, wherein the identification is carried out by detecting a signal that is generated by the user-desired input device in response to a signal stimulus provided by a user.

The Examiner relies on the following as evidence of unpatentability:

Fado	US 6,266,571 B1	July 24, 2001
Brockway	US 6,789,111 B1	Sept. 7, 2004 (filed Dec. 9, 1999)

Matthew Danda & Heather T. Brown, *Home Networking with Microsoft® Windows® XP: Step by Step 1-6*¹ (2001), available at <http://proquest.safaribooksonline.com/print?xmlid=0735614350/ch08levlsec2> ("Danda").

¹ Six printed pages of this reference were provided, and these page numbers correspond sequentially to the pages provided.

THE REJECTIONS

1. The Examiner rejected claims 1, 2, 6-8, 11, 17, 18, 20, 21, and 23 under 35 U.S.C. § 103(a) as unpatentable over Fado and Brockway. Ans.

3-9.²

2. The Examiner rejected claims 3-5, 9, 10, 12-16, 19, and 22 under 35 U.S.C. § 103(a) as unpatentable over Fado, Brockway, and Danda. Ans. 9-13.

At the outset, we note that Appellant's assertions that the Office has allegedly not provided Appellant with due process and Appellant's request to withdraw the finality of the office action (App. Br. 9-10) are petitionable matters under 37 C.F.R. § 1.181—not appealable matters. Accordingly, we will not address these issues. *See Manual of Patent Examining Procedure (MPEP), 8th ed., Rev. 7, §§ 1002 and 1201.*

We next address the obviousness rejections.

THE OBVIOUSNESS REJECTION OVER FADO AND BROCKWAY

Claim Grouping

Appellant argues all claims together. *See* App. Br. 10-12.

Accordingly, we select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Contentions

Regarding representative claim 1, the Examiner finds that Fado discloses all recited limitations, except for a device discovery system that

² Throughout this opinion, we refer to: (1) the Appeal Brief filed January 25, 2008; (2) the Examiner's Answer mailed April 11, 2008; and (3) the Reply Brief filed June 6, 2008.

polls all the plurality of externally-accessible input ports. Ans. 3-4. The Examiner relies on Brockway to teach this missing limitation so that peripheral devices connected to input ports can be detected. Ans. 4.

Appellant argues that combining Brockway with Fado will impermissibly change Fado's principle of operation. App. Br. 10-12; Reply Br. 5. In particular, Appellant contends that Fado only polls a port that has been manually selected by the user, and that the graphical user interface (GUI) is displayed based on the user's selection. In Appellant's view, changing Fado to poll all input ports will impermissibly change Fado's operation of polling a manually-selected port. App. Br. 12.

The issues before us, then, are as follows:

ISSUES

(1) Under § 103, has the Examiner erred in finding the cited prior art would have taught or suggested a device discovery system that polls all of the externally-accessible input ports to identify a user-desired input device among substantially similar devices?

(2) Under § 103, does combining Fado with Brockway render Fado unsatisfactory for its intended purpose or impermissibly change Fado's principle of operation?

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence:

Fado

1. Fado discloses a computer 1 with a processor 3 and peripheral devices (e.g., microphone 27 and speaker 31). An audio interface (e.g., 29 and 33) is located between each peripheral device (e.g., microphone 27 and speaker 31) and sound cards 21. Col. 15, ll. 26-38; Fig. 48.
2. Fado discloses using a Wizard to configure the audio interfaces of the peripheral devices following the steps shown in Figure 1. Col. 2, ll. 39-42 and col. 4, ll. 50-64; Fig. 1.
3. Fado's configuration includes a Welcome page 80 at step 12 that prompts the user to select whether to set up the microphone used in speech recognition or adjust the audio level of recorded words. Col. 2, ll. 43-45, col. 5, l. 51- col. 6, l. 14; Figs. 1-2.
4. Fado discloses an alternative GUI 90 if there is more than one sound card in the computer system at step 14. Display 90 includes a first drop-down list 94 of available sound cards for audio signal input and a second drop-down list 96 of available sound cards for audio signal output. The user selects the appropriate sound cards. Col. 6, ll. 30-47; Figs. 1 and 3.

Brockway

5. Brockway teaches a computer system 90 that includes a processor 94 coupled with memory 96 and input/output (I/O) ports 104 and 106. The system also has a peripheral identification or detection unit 108 that automatically detects and installs peripheral devices (e.g., printer 88). Col. 2, ll. 15-18 and col. 5, ll. 19-31; Fig. 3.
6. Brockway's peripheral detection unit 108 polls its physical I/O ports for the existence of a connected peripheral device at step 310 and

detects if a peripheral device is attached to the I/O ports. The peripheral identification unit 108 queries ports 104 and 106, one at a time, for an identifying response from an attached device. The peripheral detection unit 108 is designed to detect identifying information (e.g., continuously transmitted identifying signal from Plug and Play device 88). Col. 2, ll. 49-63 and col. 7, ll. 26-49; Figs. 3 and 5.

7. Brockway discloses peripheral devices include printers, scanners, and card readers, and each printer has a unique Plug and Play identifier that is continuously transmitted by the peripheral device to its connected I/O port. Col. 1, ll. 16-17 and col. 5, l. 67- col. 6, l. 3.

PRINCIPLES OF LAW

The ordering of references in an obviousness rejection is insignificant regarding the Examiner's obviousness determination. *See In re Bush*, 296 F.2d 491, 496 (CCPA 1961) ("[W]e deem it of no significance, but merely a matter of exposition, that the rejection is stated to be A in view of B instead of B in view of A, or to term one reference primary and the other secondary.")

If the proposed modification of the prior art would change the basic principles of operation of the prior art being modified, the teachings of the references are insufficient to render the claims obvious. *In re Ratti*, 270 F.2d 810, 813 (CCPA 1959).

ANALYSIS

Based on the record before us, we find no error in the Examiner's obviousness rejection of representative claim 1 which calls for, in pertinent

part, a device discovery system that polls all the externally-accessible input ports to identify a user-desired input device among substantially similar input devices. The Examiner relies on Brockway to teach this polling feature. Ans. 4. Brockway teaches a computer system (e.g., 90) that includes a processor 94 coupled with memory 96 and externally-accessing input ports (e.g., 104 and 106) and a device discovery system (e.g., peripheral detection unit 108) that automatically detects and installs peripheral devices. FF 5. The device discovery system unit 108 polls all the input ports to identify an input device among other input devices by detecting a signal (e.g., identifying signal) that is generated by the input device in response to a signal stimulus provided by the user (e.g., plugging the device to port). *See* FF 6. Additionally, Brockway discloses various peripheral devices, such as printers, can be connected to a computer, and each printer has a unique identifier. *See* FF 7. Thus, Brockway also teaches that the device discovery system polls an input port to identify an input device (e.g., printer with a unique identifier) among substantially similar input devices (e.g., a printer with another unique identifier).

Based on the above discussion, we find that Brockway teaches all the limitations found in claim 1 and that the order of the prior art in an obviousness rejection is insignificant to an obviousness determination. *See Bush*, 296 F.2d at 496. Additionally, “[i]t is well settled that ‘anticipation is the epitome of obviousness.’” *In re McDaniel*, 293 F.3d 1379, 1385 (Fed. Cir. 2002) (citations omitted); *see also In re Meyer*, 599 F.2d 1026, 1031 (CCPA 1979) (noting that

obviousness rejections can be based on references that happen to anticipate the claimed subject matter). Appellant's contentions that Fado will be impermissibly changed are therefore moot.

Nonetheless, we additionally find that including Brockway's teaching with Fado's system would not have changed Fado's principle of operation. Fado discloses an audio interface (e.g., 29 and 33) between a computer 1 with a processor 3 and multiple input devices (e.g., microphone 27 and speaker 31). FF 1. Ordinarily skilled artisans would have recognized that including Brockway's teachings (FF 5-7) with Fado's system would supplement Fado's Wizard by incorporating an automatic polling feature to detect all devices attached to Fado's system before configuring the attached input devices (*see* FF 3). That is, an ordinarily skilled artisan would have recognized this combination would have improved Fado's computer system by detecting automatically all attached input devices prior to configuring the devices and would not destroy the Wizard's ability to receive the later-entered manual selections by the user as discussed by Fado. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007).

Fado also discloses the Wizard configures installed input devices that are connected to a computer (FF 2), but fails to indicate whether the Wizard is launched automatically or manually. *See* FF 1-4. Brockway's automating polling features (FF 5-7), however, would have at least suggested launching Fado's Wizard automatically after polling so that each attached input device can be configured (FF 2). Replacing a single manual activity of launching the Wizard with an automatic means is also not inventive. *See In re Venner*, 262 F.2d 91,

95 (CCPA 1958). Moreover, we see no reason why such a replacement would destroy Fado's overall manual selection ability during configuration.

Additionally, we find an ordinarily skilled artisan would have recognized using Brockway's polling features to automate some, but not all, portions of Fado's configuration process. *See FF 5.* For example, Fado discloses selecting appropriate sound cards at step 14. FF 4. We see no reason why incorporating Brockway's teachings (FF 5-7) with Fado would not have improved Fado's device by detecting automatically those devices associated with sound cards connected to the computer, and skip over unnecessary options and manual selections in Fado. Thus, we find the combination of Fado and Brockway is nothing more than a predictable use of prior art elements according to their established function. *See KSR*, 550 U.S. at 417. We therefore find that combining Brockway with Fado would not have rendered Fado unsatisfactory for its intended purpose nor impermissibly changed Fado's principle of operation.

For the foregoing reasons, the Examiner has not erred in rejecting independent claim 1 based on Fado and Brockway. We therefore sustain the rejection of claim 1, and claims 2, 6-8, 11, 17, 18, 20, 21, and 23 which fall with claim 1.

THE OBVIOUSNESS REJECTION OVER FADO, BROCKWAY, AND DANDO

The Examiner rejected claims 3-5, 9, 10, 12-16, 19, and 22 under 35 U.S.C. § 103(a) as unpatentable over Fado, Brockway, and Danda. Ans. 9-13. Appellant does not argue any of these claims separately. *See App. Br.*

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10-12. The arguments and issues are thus the same as those in connection with claim 1. For the above reasons, we are not persuaded by Appellant's arguments, and conclude that the Examiner has not erred in rejecting claims 3-5, 9, 10, 12-16, 19, and 22 under § 103 based on Fado, Brockway, and Danda.

CONCLUSION

The Examiner has not erred in rejecting claims 1-23 under § 103.

ORDER

The Examiner's decision rejecting claims 1-23 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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